

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOHN McLELLAN,

Plaintiff,

v.

ORDER
04-CV-314

E.I. DuPONT de NEMOURS & COMPANY,
INC., et al.,

Defendants.

This case was referred to Magistrate Judge Leslie G. Foschio, pursuant to 28 U.S.C. § 636(b)(1), on June 4, 2004. On December 14, 2005, plaintiff filed a motion for partial summary judgment. On December 16, 2006, defendant filed a motion for summary judgment. On September 22, 2006, Magistrate Judge Foschio filed a Report and Recommendation, recommending that plaintiff's motion for partial summary judgment on the Second Cause of Action be granted and defendant's motion for summary judgment be denied as to the Second Cause of Action and granted as to the First, Fourth and Fifth Causes of Action.

Defendant filed objections to the Report and Recommendation on October 6, 2006. Plaintiff filed a response thereto on November 15, 2006. Oral argument on the objections was held on December 11, 2006.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions and hearing argument from the parties, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Foschio's Report and Recommendation, plaintiff's motion for partial summary judgment on the Second Cause of Action is granted and defendant's motion for summary judgment is denied as to the Second Cause of Action and granted as to the First, Fourth and Fifth Causes of Action. The case is referred back to Magistrate Judge Foschio for further proceedings.

IT IS SO ORDERED.

/s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: December 19, 2006